

5 U.S.C. 552b(c)(10). Although the Commission has to date held few meetings, those that have been held concerned the adjudication of cases and could properly have been closed.

(b) *Procedure.* A meeting may be closed if a majority of either the members of the Commission or of a panel of three or more Commissioners votes by recorded vote at the beginning of such a meeting to close it to the public. The record of the vote shall reflect the vote of each voting member and shall be made available to the public. A public announcement of the time, place, and subject matter of the meeting shall be made at the earliest practicable time, except to the extent that such information is exempt from disclosure under 5 U.S.C. 552b(c). Section 2701.3 does not apply to meetings closed under this section.

## PART 2702—REGULATIONS IMPLEMENTING THE FREEDOM OF INFORMATION ACT

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**AUTHORITY:** Sec. 113, Federal Mine Safety and Health Act of 1977, Pub. L. 95–165 (30 U.S.C. 801 *et seq.*); 5 U.S.C. 552; Pub. L. 104–231, October 2, 1996, 110 Stat. 3048.

**SOURCE:** 45 FR 33607, May 20, 1980, unless otherwise noted.

### § 2702.1 Purpose and scope.

The Federal Mine Safety and Health Review Commission (Commission) is an independent agency with authority to adjudicate contests between the Mine Safety and Health Administration of the U.S. Department of Labor and private parties, as well as certain disputes solely between private parties, arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq.* The purpose of these rules is to establish procedures for implementing the Freedom of Information Act, 5 U.S.C. 552, as amended by the Electronic Free-

dom of Information Act Amendments of 1996, Pub. L. No. 104–231, 110 Stat. 3048; to provide guidance for those seeking to obtain information from the Commission; and to make all designated information readily available to the public. Additional guidance on obtaining information from the Commission can be found in the document entitled “Reference Guide for Obtaining Information from the Federal Mine Safety and Health Review Commission,” which is available upon request from the Commission. The scope of these rules may be limited to requests for information that is not presently the subject of litigation before the Commission and that is not otherwise governed by the Commission’s Procedural Rules at 29 CFR part 2700.

[62 FR 55334, Oct. 24, 1997]

### § 2702.2 Location of offices.

The Commission maintains its Headquarters office at 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001. It has two offices for Administrative Law Judges, one at 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001, and the other at 1244 Speer Boulevard, Suite 280, Denver, Colorado 80204–3582.

[67 FR 60862, Sept. 27, 2002]

### § 2702.3 Requests for information.

(a) All requests for information should be in writing and should be mailed or delivered to Executive Director, Federal Mine Safety and Health Review Commission, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001. The words “Freedom of Information Act Request” should be printed on the face of the envelope. Requests for information shall describe the particular record requested to the fullest extent possible and specify the preferred form or format (including electronic formats) of the response. The Commission shall accommodate requesters as to form or format if the record is readily reproducible in the requested form or format. When requesters do not specify the preferred form or format of the response, the Commission shall respond in the form or format in which the record is most accessible to the Commission.

(b) A determination whether to comply with the request will be made by the Executive Director, with the consent of a majority of the Commissioners. In the event of a tie vote of the Commissioners regarding the Executive Director's determination whether to comply with a request, the Executive Director's recommendation will be deemed approved by the Commission. Except in unusual circumstances, as described in paragraph (c) of this section the determination will be made within 20 working days of receipt. Appeals of adverse decisions may be made, in writing, to the Chairman of the Commission, at the same address, within 20 working days. Determination of appeals will be made by the Chairman within 20 working days after receipt. If the records to be disclosed are not provided with the initial letter setting forth the determination as to the request, the records will be sent as soon as possible thereafter.

(c)(1) In unusual circumstances as described in this paragraph, when additional time is needed to respond to the initial request, the Commission shall acknowledge the request in writing within the 20-day period, describe the circumstances requiring the delay, and indicate the anticipated date for a substantive response that may not exceed 10 additional working days, except as provided in paragraph (d) of this section. With respect to a request for which a written notice has extended the time limit by 10 additional working days, and the Commission determines that it cannot make a response determination within that additional 10 working day period, the requester will be notified and provided an opportunity to limit the scope of the request so that it may be processed within the extended time limit, or an opportunity to arrange an alternative time frame for processing the request or a modified request. Refusal by the requester to reasonably modify the request or arrange for an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of paragraph (d) of this section. For purposes of this paragraph, "unusual circumstances" that may justify a delay are:

(i) The need to search for and collect the requested records from other facilities that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are requested in a single request;

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or more components of the agency having substantial subject matter interest in the request; or

(iv) The need to consult with the submitter of requested information.

(2) Whenever it reasonably appears that certain requests by the same requester, or a group of requesters acting in concert, actually constitute a single request that would otherwise satisfy the unusual circumstances specified in this paragraph, and the requests involve clearly related matters, such requests may be aggregated for purposes of this paragraph. Multiple requests involving unrelated matters will not be aggregated.

(d) In the event that the Commission is unable to comply with the time limits for responding to a request specified in paragraphs (a) and (c) of this section, it may request additional time to complete its review of the records, and request a court to retain jurisdiction and allow it such additional time to complete its review, if it can show that exceptional circumstances exist and that it is exercising due diligence in responding to the request. For purposes of this paragraph, "exceptional circumstances" do not include a delay that results from a predictable workload of requests, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests. Refusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing the request (or a modified request) under paragraph (c) of this section shall be considered as a factor in determining whether exceptional circumstances exist for purposes of this paragraph.

#### § 2702.4

(e)(1) A person requesting records from the Commission pursuant to this section may request expedited processing of his request in cases in which he can demonstrate a compelling need for the records requested. For purposes of this paragraph a compelling need means:

(i) That a failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) The information is urgently needed by a person primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity.

(2) A demonstration of compelling need by a person making a request for expedited processing shall be made by a statement certified by such person to be true and correct to the best of his knowledge and belief. Notice of the determination whether to grant expedited processing in response to a requester's claim of compelling need shall be provided to the person making the request within 10 calendar days after receipt of the request. The Commission will provide expeditious consideration of administrative appeals of determinations whether to provide expedited processing. Once a determination has been made to grant expedited processing, the Commission will process the request as soon as practicable.

(f) In denying a request for records, in whole or in part, the Commission shall make a reasonable effort to estimate the volume of the records denied, and provide this estimate to the person making the request, unless providing such an estimate would harm an interest protected by the exemption pursuant to which the request is denied.

(g) Any reasonably segregable portion of a record shall be provided to the person requesting it after the deletion of any exempt portions of the record. The amount of information deleted shall be indicated on the released portion of the record, at the place in the record the deletion is made if technically feasible, unless indicating the extent of the deletion would harm an interest protected by the exemption

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pursuant to which the deletion is made.

[62 FR 55335, Oct. 24, 1997, as amended at 67 FR 60863, Sept. 30, 2002]

#### § 2702.4 Materials available.

Materials which may be made promptly available from the Commission include, but are not limited to:

(a) A guide for requesting records or publicly available information from the Commission;

(b) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(c) Indices providing identifying information to the public as to the opinions described in the preceding paragraph which may be relied upon, used, or cited as precedent;

(d) Statements of policy and interpretations which have been adopted by the Commission and are not published in the FEDERAL REGISTER.

[62 FR 55336, Oct. 24, 1997]

#### § 2702.5 Fees applicable—categories of requesters.

(a) When documents are requested for commercial use, requesters will be assessed the full direct costs of searching for, reviewing for release, and duplicating the records sought.

(b) When records are being requested by educational or noncommercial scientific institutions whose purpose is scholarly or scientific research, and not for commercial use, the requester will be assessed only for the cost of duplicating the records sought, but no charge will be made for the first 100 paper pages reproduced.

(c) When records are being requested by representatives of the news media, the requester will be assessed only for the cost of duplicating the records sought, but no charge will be made for the first 100 paper pages reproduced.

(d) For any other request not described in paragraphs (a) through (c) of this section, the requester will be assessed the full direct costs of searching for and duplicating the records sought, except that the first two hours of manual search time and the first 100 paper pages of reproduction shall be furnished without charge.